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10/733,940	12/11/2003	Suzie Callaway	34219	8711

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EXAMINER	
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ART UNIT	PAPER NUMBER
3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/733,940	CALLAWAY ET AL.	
	Examiner	Art Unit	
	DANIEL P. VETTER	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of the Claims

1. Claims 1-20 are currently pending in this application.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. Claims 1-12 are directed to a "program" not claimed as embodied or stored on any tangible computer readable media. Claims directed to software or computer code *per se* do not fall into any of the above four statutory categories of invention. To be patentable, functional descriptive material such as data structures for executing a program on a computer must be recited as functionally or structurally interrelated to a tangible computer readable medium such as a memory or disk. MPEP § 2106 IV.(B)(1)(a).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 7 recites the limitation "the averaging tool" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Strothmann, et al., U.S. Pat. Pub. No. 2003/0069747 (Reference A of the attached PTO-892).

10. As per claim 1, Strothmann teaches a fare searching program comprising: a fare searching tool operable to perform a daily search for a lowest fare available on a current day for transportation between a city pair (¶ 0006); and a fare storage tool operable to store the lowest fare for each of a plurality of months so that the lowest fare for each month may be recalled and compared in the future (¶ 0006).

11. As per claim 6, Strothmann teaches the program of claim 1 as described above. Strothmann further teaches a network connectivity tool operable to connect with a fare source so that the fare searching tool may search the fare source (¶¶ 0026-27).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 2-5 and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strothmann, et al. in view of Lancaster, et al., U.S. Pat. Pub. No. 2002/0133456 (Reference B of the attached PTO-892).

14. As per claim 2, Strothmann teaches the program of claim 1 as described above. Strothmann further teaches a tool operable to analyze each of the lowest fares corresponding to a plurality of days in each of a preceding twelve months (¶ 0012) thereby creating a monthly trend of the lowest fares for each month (¶ 0006). Strothmann does not teach that the program specifically uses averaging as the trend analysis; which is taught by Lancaster (¶ 0179). Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself—that is, in the substitution of the fare history averaging taught in Lancaster for the fare history trend analysis taught in Strothmann. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate fare history averaging because it is merely the simple substitution of one known element for another that produces predictable results.

15. As per claim 3, Strothmann in view of Lancaster teaches the program of claim 2 as described above. Strothmann further teaches the tool is further operable to analyze the monthly trends thereby creating an annual trend of the lowest fares (¶ 0006). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 2.

16. As per claim 4, Strothmann in view of Lancaster teaches the program of claim 2 as described above. Strothmann further teaches a display tool operable to display the monthly trends corresponding to each of the months (¶¶ 0021, 37). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 2.

17. As per claim 5, Strothmann in view of Lancaster teaches the program of claim 4 as described above. Strothmann further teaches the display tool is further operable to display the lowest fare available on the current day (¶¶ 0021, 30).

18. As per claim 7, Strothmann teaches the program of claim 1 as described above. Strothmann further teaches the tool is further operable to analyze the lowest fares corresponding to the months thereby creating an annual trend of the lowest fares (¶ 0006). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 2.

19. As per claim 8, Strothmann teaches a fare searching program for comparing currently available fares for transportation between a selected city-pair with historically available fares for transportation between the selected city-pair, the program comprising: a fare searching tool operable to perform a daily search for a lowest fare available on a current day for fare between one of a plurality of pre-selected city pairs (¶ 0006); a tool operable to analyze each of the lowest fares corresponding to a plurality of days in each of twelve months (¶ 0012) thereby creating a monthly trend of the lowest fares for each month and for each city pair (¶ 0006); a fare storage tool operable to store the monthly trend so that the monthly trend may be recalled up to one year into the future and compared to fares available in the future (¶ 0022); and a display tool operable to display the monthly trends for the selected city pair and the lowest fare available on the current day for the selected city pair (¶¶ 0021, 30). Strothmann does not teach that the program specifically uses averaging as the trend analysis; which is taught by Lancaster (¶ 0179). Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself—that is, in the substitution of the fare history averaging taught in Lancaster for the fare history trend analysis taught in Strothmann. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate fare history averaging because it is merely the simple substitution of one known element for another that produces predictable results.

20. As per claim 9, Strothmann in view of Lancaster teaches the program of claim 8 as described above. Strothmann further teaches the tool is further operable to create an annual trend of the lowest fares (¶ 0006). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 8.

21. As per claim 10, Strothmann in view of Lancaster teaches the program of claim 9 as described above. Strothmann further teaches the display tool is further operable to display the annual trend corresponding to a preceding twelve months for the selected city pair (¶¶ 0012, 21). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 8.

22. As per claim 11, Strothmann in view of Lancaster teaches the program of claim 8 as described above. Strothmann further teaches a network connectivity tool operable to connect with a fare source so that the fare searching tool may search the fare source (¶¶ 0026-27).

23. As per claim 12, Strothmann teaches an airfare searching program for comparing currently available airfares for airline transportation between a selected city-pair with historically available airfares for airline transportation between the selected city-pair, the program comprising: an airfare searching tool operable to perform a daily search for a lowest airfare available on a current day for airfare between each of a plurality of pre-selected city pairs (¶ 0006); a network connectivity tool operable to connect the searching tool with an airfare source so that the searching tool may search the airfare source (¶¶ 0026-27); a tool operable to analyze each of the lowest airfares corresponding to each day of each of twelve months (¶ 0012) thereby creating a monthly trend of the lowest airfares for each month and for each city pair (¶ 0006); wherein the tool is further operable to create an annual trend of the lowest airfares for each city pair (¶ 0006); an airfare storage tool operable to store the monthly trends so

that the monthly trends may be recalled up to one year into the future and compared to airfares available in the future (¶ 0022); and a display tool operable to display the monthly trends, the annual trend corresponding to a preceding twelve months, and the lowest airfare available on the current day for the selected city pair (¶¶ 0012, 21, 30). Strothmann does not teach that the program specifically uses averaging as the trend analysis; which is taught by Lancaster (¶ 0179). Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself—that is, in the substitution of the fare history averaging taught in Lancaster for the fare history trend analysis taught in Strothmann. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate fare history averaging because it is merely the simple substitution of one known element for another that produces predictable results.

24. As per claim 13, Strothmann teaches a method of searching for a lowest available fare for transportation between a selected city pair, the method comprising the steps of: (a) receiving in a computer system indication of a plurality of city pairs (¶¶ 0006, 37); (b) establishing a connection between the computer system and a fare source over a network (¶ 0030); (c) receiving in the computer system information relating to the lowest fare currently available from the fare source for at least the selected city pair (¶ 0030); (d) repeating steps (b) and (c) for each day of a current month (¶ 0012); and (e) calculating in the computer system a monthly trend analysis of the lowest fares currently available for the month (¶ 0022). Strothmann does not teach that the method specifically calculates averages as the trend analysis; which is taught by Lancaster (¶ 0179). Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself—that is, in the substitution of the fare history averaging taught in Lancaster for the fare history trend analysis taught in Strothmann. It would have been

prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate fare history averaging because it is merely the simple substitution of one known element for another that produces predictable results.

25. As per claim 14, Strothmann in view of Lancaster teaches the method of claim 13 as described above. Strothmann further teaches (f) storing in the computer system at least two of the lowest fares currently available for the month, such that the monthly trend may be calculated for up to one year (¶ 0006). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 13.

26. As per claim 15, Strothmann in view of Lancaster teaches the method of claim 13 as described above. Strothmann further teaches repeating steps (b) thru (d) for each month of a preceding year such that the computer system may calculate at least twelve monthly trends corresponding to each month of the preceding year (¶¶ 0006, 36). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 13.

27. As per claim 16, Strothmann in view of Lancaster teaches the method of claim 15 as described above. Strothmann further teaches (g) receiving in the computer system indication of the selected city pair (¶ 0037); (h) displaying the lowest fare currently available for the selected city pair (¶¶ 0021, 30); (i) calculating the monthly trends for the preceding year for the selected city pair (¶ 0006); and (j) displaying the monthly trends (¶¶ 0021-22). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 13.

28. As per claim 17, Strothmann in view of Lancaster teaches the method of claim 16 as described above. Strothmann further teaches calculating an annual trend for the preceding year for the selected city pair (¶ 0012) and displaying the annual trend (¶¶ 0021-22). It would have been prima facie obvious to one having ordinary skill in the art

at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 13.

29. As per claim 18, Strothmann teaches a method of searching for a lowest available airfare for airline transportation between a selected city pair, the method comprising the steps of: (a) receiving in a computer system indication of a plurality of city pairs (¶¶ 0006, 37); (b) establishing a connection between the computer system and an airfare source over a network (¶ 0030); (c) receiving in the computer system information relating to the lowest airfare currently available from the airfare source for each of the city pairs (¶ 0030); (d) repeating steps (b) and (c) for each day of a current month (¶ 0012); (e) calculating in the computer system a monthly trend of the lowest airfares currently available for at least two days of the current month (¶ 0022); (f) storing in the computer system the lowest airfares currently available for at least two days of the current month, such that the monthly trend may be calculated for up to one year (¶ 0006); (g) repeating step (f) for each month of a preceding year such that the computer system may calculate at least twelve monthly trends corresponding to each month of the preceding year (¶¶ 0006, 36); and (h) calculating in the computer system an annual trend for the preceding year (¶ 0012). Strothmann does not teach that the method specifically calculates averages as the trend analysis; which is taught by Lancaster (¶ 0179). Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself—that is, in the substitution of the fare history averaging taught in Lancaster for the fare history trend analysis taught in Strothmann. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate fare history averaging because it is merely the simple substitution of one known element for another that produces predictable results.

30. As per claim 19, Strothmann in view of Lancaster teaches the method of claim 18 as described above. Strothmann further teaches (i) receiving in the computer system

indication of the selected city pair (¶ 0037); (j) displaying the lowest airfare currently available for the selected city pair (¶¶ 0021, 30); (k) displaying the monthly trends for the preceding year for the selected city pair (¶¶ 0006, 21-22); and (l) displaying the annual trend for the preceding year for the selected city pair (¶¶ 0012, 21-22). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 18.

31. As per claim 20, Strothmann in view of Lancaster teaches the method of claim 18 as described above. Strothmann further teaches step (f) comprises storing a ten lowest ones of the lowest airfares currently available of the current month (¶ 0006, 22), thereby allowing the computer system to calculate the monthly trends by analyzing the ten lowest airfares for each month (¶ 0022). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate averaging as the trend analysis as taught by Lancaster for the reasons previously stated above with respect to claim 18.

Conclusion

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Haar, U.S. Pat. Pub. No. 2002/0026405 (Reference C of the attached PTO-892) teaches a method of managing fluctuations in the prices of airline travel. Figa, U.S. Pat. Pub. No. 2004/0230451 (Reference D of the attached PTO-892) teaches a network-based system and method for determining airfares based upon origin and destination, and for searching the resulting airfares by date and cost wherein the results are provided in a calendar format with the lowest fares for each day displayed in the calendar. Etzioni, et al., U.S. Pat. Pub. No. 2005/0004819 (Reference E of the attached PTO-892) teaches techniques for using predictive pricing information for items to assist in evaluating buying and/or selling decisions in various ways, such as on behalf of end-user item acquirers and/or intermediate item providers; wherein the predictive pricing for an item may be based on an analysis of historical pricing information for that

item and/or related items, and can be used to make predictions about future pricing information for the item; and wherein such predictions may then be provided to users in various ways to enable comparison of current prices to predicted future prices, thereby assisting customers when purchasing airline tickets and/or to assist travel agents when selling airline tickets.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL P. VETTER whose telephone number is (571)270-1366. The examiner can normally be reached on Monday through Thursday from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W Hayes/
Supervisory Patent Examiner, Art Unit 3628